

AMENDED IN ASSEMBLY MAY 13, 2014

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2139

Introduced by Assembly Member Eggman

February 20, 2014

An act to amend Sections ~~442, 442.5, 442.5~~ and 442.7 of the Health and Safety Code, relating to terminal illness.

LEGISLATIVE COUNSEL'S DIGEST

AB 2139, as amended, Eggman. End-of-life care: patient notification.

Under existing law, the State Department of Public Health licenses and regulates health facilities, including hospice facilities, and the provision of hospice services. Existing law establishes the Medical Practice Act, which provides for the regulation and licensure of physicians and surgeons by the Medical Board of California. ~~Existing law authorizes an adult to give an individual, known as an agent, authority to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.~~

When a health care provider, as defined, makes a diagnosis that a patient has a terminal illness, existing law requires the health care provider to provide the patient, upon the patient's request, with comprehensive information and counseling regarding legal end-of-life options, as specified, and provide for the referral or transfer of a patient, as provided, if the patient's health care provider does not wish to comply with the patient's request for information on end-of-life options.

This bill would apply these provisions to ~~an agent under a power of attorney for health care~~ *another person authorized to make health care*

decisions, as defined, for a patient with a terminal illness diagnosis. The bill would additionally require the health care provider to notify, except as specified, the patient or, when applicable, the agent, other person authorized to make health care decisions, when the health care provider makes a diagnosis that a patient has a terminal illness, of the patient's and the other authorized person's right to comprehensive information and counseling regarding legal end-of-life care options. The bill would define the term "terminal illness" for these purposes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 442 of the Health and Safety Code is~~
2 ~~amended to read:~~
3 ~~442. For the purposes of this part, the following definitions~~
4 ~~shall apply:~~
5 ~~(a) "Actively dying" means the phase of terminal illness when~~
6 ~~death is imminent.~~
7 ~~(b) "Agent" means an individual designated in a power of~~
8 ~~attorney for health care, as provided in Article 1 (commencing~~
9 ~~with Section 4670) and Article 2 (commencing with Section 4680)~~
10 ~~of Chapter 1 of Part 2 of Division 4.7 of the Probate Code, to make~~
11 ~~a health care decision for the patient who has been diagnosed with~~
12 ~~a terminal illness, regardless of whether the person is known as~~
13 ~~an agent or attorney in fact, or by some other term.~~
14 ~~(c) "Disease-targeted treatment" means treatment directed at~~
15 ~~the underlying disease or condition that is intended to alter its~~
16 ~~natural history or progression, irrespective of whether or not a cure~~
17 ~~is a possibility.~~
18 ~~(d) "Health care provider" means an attending physician and~~
19 ~~surgeon. It also means a nurse practitioner or physician assistant~~
20 ~~practicing in accordance with standardized procedures or protocols~~
21 ~~developed and approved by the supervising physician and surgeon~~
22 ~~and the nurse practitioner or physician assistant.~~
23 ~~(e) "Hospice" means a specialized form of interdisciplinary~~
24 ~~health care that is designed to provide palliative care, alleviate the~~
25 ~~physical, emotional, social, and spiritual discomforts of an~~
26 ~~individual who is experiencing the last phases of life due to the~~
27 ~~existence of a terminal disease, and provide supportive care to the~~

1 primary caregiver and the family of the hospice patient, and that
2 meets all of the criteria specified in subdivision (b) of Section
3 1746.

4 (f) “Palliative care” means medical treatment, interdisciplinary
5 care, or consultation provided to a patient or family members, or
6 both, that has as its primary purpose the prevention of, or relief
7 from, suffering and the enhancement of the quality of life, rather
8 than treatment aimed at investigation and intervention for the
9 purpose of cure or prolongation of life as described in subdivision
10 (b) of Section 1339.31. In some cases, disease-targeted treatment
11 may be used in palliative care.

12 (g) “Refusal or withdrawal of life-sustaining treatment” means
13 forgoing treatment or medical procedures that replace or support
14 an essential bodily function, including, but not limited to,
15 cardiopulmonary resuscitation, mechanical ventilation, artificial
16 nutrition and hydration, dialysis, and any other treatment or
17 discontinuing any or all of those treatments after they have been
18 used for a reasonable time.

19 (h) “Terminal illness” means a medical condition resulting in
20 a prognosis of a life expectancy of one year or less, if the disease
21 follows its normal course.

22 SEC. 2.

23 SECTION 1. Section 442.5 of the Health and Safety Code is
24 amended to read:

25 442.5. (a) When a health care provider makes a diagnosis that
26 a patient has a terminal illness, the health care provider shall ~~notify~~
27 *do both of the following:*

28 (1) *Notify the patient of his or her right to, or when applicable,*
29 *the agent of the patient’s right to, comprehensive information and*
30 *counseling regarding legal end-of-life options and, upon the patient*
31 *or agent’s request, provide the patient or agent right of another*
32 *person authorized to make health care decisions for the patient*
33 *to, comprehensive information and counseling regarding legal*
34 *end-of-life options. This notification maybe provided at the time*
35 *of diagnosis or at a subsequent visit in which the provider discusses*
36 *treatment options with the patient or the other authorized person.*

37 (2) *Upon the request of the patient or another person authorized*
38 *to make health care decisions for the patient, provide the patient*
39 *or other authorized person with comprehensive information and*
40 *counseling regarding legal end-of-life care options pursuant to this*

1 section. When a terminally ill patient is in a health facility, as
2 defined in Section 1250, the health care provider, or medical
3 director of the health facility if the patient's health care provider
4 is not available, may refer the patient or ~~agent~~ *other authorized*
5 *person* to a hospice provider or private or public agencies and
6 community-based organizations that specialize in end-of-life care
7 case management and consultation to receive comprehensive
8 information and counseling regarding legal end-of-life care options.

9 (a)

10 (b) ~~If the patient or agent indicates a desire to receive the~~
11 ~~information and counseling, a patient or another person authorized~~
12 ~~to make health care decisions for the patient, requests information~~
13 ~~and counseling pursuant to paragraph (2) of subdivision (a), the~~
14 comprehensive information shall include, but not be limited to,
15 the following:

16 (1) Hospice care at home or in a health care setting.

17 (2) A prognosis with and without the continuation of
18 disease-targeted treatment.

19 (3) The patient's right to refusal of or withdrawal from
20 life-sustaining treatment.

21 (4) The patient's right to continue to pursue disease-targeted
22 treatment, with or without concurrent palliative care.

23 (5) The patient's right to comprehensive pain and symptom
24 management at the end of life, including, but not limited to,
25 adequate pain medication, treatment of nausea, palliative
26 chemotherapy, relief of shortness of breath and fatigue, and other
27 clinical treatments useful when a patient is actively dying.

28 (6) ~~If the patient has not appointed an agent under a power of~~
29 ~~attorney for health care, the~~ *The* patient's right to give individual
30 health care instruction pursuant to Section 4670 of the Probate
31 Code, which provides the means by which a patient may provide
32 written health care instruction, such as an advance health care
33 directive, and the patient's right to appoint a legally recognized
34 health care decisionmaker.

35 (b)

36 (c) The information described in subdivision-~~(a)~~ (b) may, but
37 is not required to, be in writing. Health care providers may utilize
38 information from organizations specializing in end-of-life care
39 that provide information on factsheets and Internet Web sites to
40 convey the information described in subdivision-~~(a)~~ (b).

1 ~~(e)~~

2 ~~(d)~~ Counseling may include, but is not limited to, discussions
3 about the outcomes for the patient and his or her family, based on
4 the interest of the patient. Information and counseling, as described
5 in subdivision ~~(a)~~, ~~(b)~~, may occur over a series of meetings with
6 the health care provider or others who may be providing the
7 information and counseling based on the patient's needs.

8 ~~(d)~~

9 ~~(e)~~ The information and counseling sessions may include a
10 discussion of treatment options in a *culturally sensitive* manner
11 that the patient and his or her family, or, when applicable, ~~the~~
12 ~~agent~~, *another person authorized to make health care decisions*
13 *for the patient*, can easily understand. If the patient or ~~agent~~ *other*
14 *authorized person* requests information on the costs of treatment
15 options, including the availability of insurance and eligibility of
16 the patient for coverage, the patient or ~~agent~~ *other authorized*
17 *person* shall be referred to the appropriate entity for that
18 information.

19 ~~(f)~~ *The notification in paragraph (1) of subdivision (a) shall not*
20 *be required if the patient or other person authorized to make health*
21 *care decisions, as defined in Section 4617 of the Probate Code,*
22 *for the patient has already received the notification.*

23 ~~(g)~~ *For purposes of this section, "health care decisions" has*
24 *the meaning set fourth in Section 4617 of the Probate Code.*

25 ~~SEC. 3.~~

26 ~~SEC. 2.~~ Section 442.7 of the Health and Safety Code is
27 amended to read:

28 442.7. If a health care provider does not wish to comply with
29 his or her patient's request or, when applicable, ~~the agent's~~ request
30 *of another person authorized to make health care decisions, as*
31 *defined in Section 4617 of the Probate Code, for the patient* for
32 information on end-of-life options, the health care provider shall
33 do both of the following:

34 (a) Refer or transfer a patient to another health care provider
35 that shall provide the requested information.

36 (b) Provide the patient or ~~agent~~ *other person authorized to make*
37 *health care decisions for the patient* with information on

- 1 procedures to transfer to another health care provider that shall
- 2 provide the requested information.

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